

## **3-10.000 CIVIL FINANCIAL LITIGATION ACTIVITY**

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### **3-10.120 Nationwide Central Intake Facility**

Commencing on October 1, 1990, all federal agencies are required to refer claims when the principle amount is \$1,000,000 or less for litigation or debt enforcement to the Department of Justice through the Nationwide

Central Intake Facility. The Nationwide Central Intake Facility acknowledges receipt of the claim, provides a limited review of the Claims Collection Litigation Report (CCLR) for compliance with the Federal Claims Collection Standards, and forwards the information to the appropriate United States Attorney's office for litigation. Federal agencies are not required to send the following types of cases to the Nationwide Central Intake Facility: anti-trust cases; environment and natural resources cases; tax cases; fraud cases; interagency claims; renewal of judgment lien only cases; and if the agency is seeking Department of Justice concurrence on an agency's proposal to suspend or terminate action to collect a claim.

In cases where time is of the essence in securing the government's position, the agency may send a referral directly to the United States Attorney's office with a copy of the CCLR to the Nationwide Central Intake Facility. If the Financial Litigation Unit receives a referral package directly from an agency, or they are requested to enforce a civil judgment from another division within the United States Attorney's office that has not been previously docketed by the Nationwide Central Intake Facility, Financial Litigation Unit personnel shall provide data on the referral by completing and mailing the "Nationwide Case Initiation Sheet" to the Nationwide Central Intake Facility.

### **3-10.130 Claims Collection Litigation Report**

The Federal Claims Collection Standards (4 C.F.R. Parts 101 to 105) prescribe regulations which agencies must follow to collect, compromise and suspend or terminate collection action on their claims. Agencies are required to provide certain information to the Department of Justice when referring claims for litigation and enforced collection. See 4 C.F.R. § 105.1 et seq. The Financial Litigation Staff, with the support and cooperation of the General Accounting Office, developed the Claims Collection Litigation Report (CCLR) as the standard report to convey this information.

Unless an exception has been granted by the Financial Litigation Staff, agencies are required to provide a completed CCLR with each claim they refer. See 4 C.F.R. § 105.2. United States Attorneys' offices are responsible for ensuring that CCLRs comply with the requirements set forth in Federal Claims Collection Standards. These requirements should be addressed with local agency representatives when claims are referred without the CCLR, or when the CCLRs provided are inadequate. The Deputy Director, Legal Programs, should be advised of any problems which cannot be resolved or continue to persist at the local level.

Some information requested on the CCLR may be superfluous to a particular agency's claim or impossible for the agency to obtain. The agency's inability to obtain all information required on the CCLR should not be viewed as a bar to the referral of a claim for litigation. However, information requested on the CCLR should be provided to the extent feasible and any omissions by the agency should be noted throughout the CCLR.

The Federal Claims Collection Standards also provide that once a claim has been referred to the Department of Justice, the referring agency shall refrain from having any contact with the debtor and shall direct the debtor to the United States Attorney on any matters concerning the claim. The Standards further provide that the United States Attorney shall be immediately notified by the referring agency of any payments which are received from the debtor subsequent to referral of a claim. See 4 C.F.R. § 105.1(d).

For further information on the review of claim referral packages, see the EOUSA Resource Manual at 108.

### **3-10.141 Returning Deficient Referrals**

If the CCLR or accompanying claim referral package is deficient and the deficiency cannot be expeditiously resolved with a minimum of effort, a deficiency or declination letter shall be immediately prepared and used to

return the claim to the agency. This letter will inform the client agency of the specific reason(s) why the claim is considered deficient and that the United States Attorney presently declines to litigate and enforce collection of the claim. See the EOUSA Resource Manual at 109.

Suit shall not be filed on any claim which is referred after the applicable statute of limitations period has expired. Such claims shall be immediately declined and returned to the agency. Agencies are required to refer claims to the Department of Justice as early as possible, consistent with aggressive agency collection action and should be well within the period for bringing a timely suit against the debtor. 4 C.F.R. § 105.1(a).

### **3-10.142 Acknowledgment of Referral**

As soon as it is determined that the CCLR and accompanying referral package is complete, the claim shall be opened in the United States Attorney's office collection tracking system. The Acknowledgement of Referral portion of the Nationwide Central Intake Facility Claim Acknowledgement/Closing Notification form must be returned to the Nationwide Central Intake Facility. Additionally, an acknowledgment letter shall be promptly sent to the referring agency to notify the agency that the claim has been received, the name of the contact at the United States Attorney's office handling the case, and the United States Attorney's office case number.

### **3-10.150 Precomplaint Demand**

Agencies which document their compliance with the Federal Claims Collection Standards in the CCLR will have fulfilled the pre-filing notice requirements of Executive Order No. 12778 on Civil Justice Reform dated January 1992, and the United States Attorney's office should not send another prejudgment demand letter. Further delay in filing a complaint post-referral will usually not be warranted and may be counterproductive.

### **3-10.160 Filing Complaint**

Pursuant to an Office of the Inspector General finding made during a Fiscal Year 1990 United States Attorney's offices inspection, routine fully-documented referrals for debt collection action should be filed within 30 days of receipt. More complex referrals which may require additional preparation time should be filed within 45 days. Incomplete referrals should be immediately declined. See USAM 3-10.141.

Financial Litigation Unit personnel are not required to "perform collection actions which should have been undertaken by any other agency." 4 C.F.R. § 102.1. Claims are referred to United States Attorneys' offices for litigation and enforced collection, and the referring agency is under an affirmative obligation to provide the current address of the debtor. See 4 C.F.R. § 105.2. Although a limited amount of skiptracing incident to litigation may be undertaken, if substantial effort is needed to locate the debtor prior to filing suit, then the case should be returned to the agency for skiptracing.

In cases where federal law authorizes the United States to enforce a state court judgment (i.e., Public Health Service cases), the United States Attorney's office may register the judgment with the clerk of the court and enforce it accordingly.

### **3-10.170 Prejudgment Agreements to Pay**

If, after the government files the complaint, the debtor contacts the United States Attorneys' office, acknowledges the debt, and requests to enter into an installment payment plan, then the debtor shall be required

to complete and sign a Form OBD-500, Financial Statement, or similar statement of financial disclosure. If the financial disclosure information reveals the debtor's ability to pay the debt in full, then the United States Attorney's office should require the debt to be paid in full. If an installment payment plan is justified based upon a review of the Financial Statement and other credit information, the debtor shall then be required to execute a consent judgment and that judgment shall be immediately entered with the court. The consent judgment shall be for an amount equal to the principal amount of the debt plus all prejudgment interest, administrative costs and penalties payable to the date of judgment, and court costs. The client agency shall be promptly notified of the entry of the judgment.

Once a determination has been made by the United States Attorney to pursue a claim, the government's interests should be promptly secured. Given that the debtor has been provided ample opportunity to arrange for payment of the debt prior to referral, it is counterproductive for the United States Attorney to provide further opportunity for payment without first securing the government's interests. Accordingly, the use of confess-judgment notes (sometimes referred to as "Cognovit notes") or promissory notes containing an agreement for judgment are not acceptable.

A claim shall remain in prejudgment status only in those instances where the debtor agrees to pay the debt in full within 30 days and executes a consent judgment with the understanding that the judgment will be entered with the court if full payment is not received within 30 days. If full payment is not received within the 30 day period, the executed consent judgment shall be immediately entered with the court and enforced collection efforts initiated.

The United States Attorney shall personally approve and set forth in writing for the Financial Litigation Unit any exceptions to this policy which are required for the handling of unusual types of situations or claims. Any approved exceptions shall be incorporated into the district's Financial Litigation Plan.

In addition to obtaining a consent judgment, Financial Litigation Unit personnel should ensure that installment payment terms are set forth within the body of a separate written payment plan or letter of agreement signed by the debtor. If the terms for repayment are included in the consent judgment, such consent judgment shall also provide for future modification of the terms upon a change in the debtor's economic circumstances. This will allow for increases in the debtor's monthly payment amount when justified by updated financial information.

Financial Litigation Unit personnel should always endeavor to increase the amount of a debtor's monthly payment so that the debt is satisfied in the shortest period of time possible. Updated financial information should be obtained from the debtor and reviewed at least every year.

### **3-10.180 Civil Compromise Policy**

A claim or judgment should only be compromised with agency approval. Whenever a claim is compromised, the full compromised debt should be collected in a lump sum. Any agreement to accept several payments must provide for payment of the full compromise amount within 90 days. If several payments are agreed to with full payment within 90 days, the government's claim must be secured by the entry of a judgment.

Following payment of a compromised amount, the Financial Litigation Unit shall promptly send the client agency a notice of compromise and a closing letter. The letter will document for the agency the reason(s) why the claim was compromised and inform it of the total amount recovered.

### **3-10.200 Civil Postjudgment Financial Litigation Activity -- Perfecting the Judgment**

Immediately following expiration of the 10-day automatic stay after entry of the judgment (whether by default, stipulation, court determination, or by the referral of a judgment from another district), see Fed. R. Civ. P. 62(a), immediate action shall be taken to perfect the judgment as a lien in accordance with the Federal Debt Collection Procedures Act. See 28 U.S.C. § 3201.

Special care should be taken to ensure that the judgment is perfected as a lien by filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of § 6323(f) of the Internal Revenue Code of 1986. A lien should be filed in accordance with state law filing requirements and should be filed in any state where the debtor owns real property.

### **3-10.220 Bill of Cost**

Upon entry of a judgment, the Financial Litigation Unit should present a Bill of Cost to the Clerk of the United States District Court. See 28 U.S.C. § 1920.

The amount of any costs taxed by the clerk shall be included in the letter notifying the agency of entry of judgment. A Bill of Cost should also be presented for the recovery of any subsequent costs and the agency promptly informed of the amount of such costs once taxed by the clerk.

### **3-10.230 Notice of Entry of Judgment to Client Agency**

The client agency shall be promptly notified of the entry of the judgment. Upon request, the Financial Litigation Unit shall provide a copy of the judgment to the agency. The letter of notification should contain the necessary information to enable the agency to update properly their records and maintain accurate account balances. The letter will also serve as a request for any supplemental ability to pay information which the agency may have obtained subsequent to referring the claim.

### **3-10.240 Postjudgment Demand**

Immediately following expiration of the 10-day automatic stay after entry of the judgment, see Fed. R. Civ. P. 62(a), a letter shall be mailed to the debtor providing notice of entry of the judgment and demanding payment in full within a time certain. The period of time established for full payment from the debtor shall not exceed 30 days from the date of the letter.

The date by which full payment should be received from the debtor shall be entered into the automated tickler system to ensure timely follow-up. If full payment or an appropriate offer to repay is not received by this date, enforced collection proceedings shall be immediately initiated.

### **3-10.300 Installment Payment Plans**

An installment payment plan shall be established only when the debtor is unable to make payment in full, or to obtain suitable financing from a private institution in order to make payment in full. Establishment of an installment payment plan shall not be considered unless and until a financial statement has been fully completed and signed by the debtor. Under no circumstances shall an installment payment plan be agreed to, or the terms

and conditions of any plan be discussed, with the debtor prior to receiving a financial statement. All financial information provided must first be reviewed by Financial Litigation Unit personnel to determine whether a payment plan would be appropriate and, if so, to ensure that the maximum monthly payment amount is obtained and the judgment is liquidated at the earliest possible date.

See also the EOUSA Resource Manual at 110.

### **3-10.310 Default on Installment Payment Plan**

"Default" is defined as the debtor's failure to make a payment within five days of the payment due date agreed to and established in the written installment payment plan. In the event of a default, a past due notice shall be mailed to the debtor not later than 20 days from the date of default. The past due notice should clearly advise the debtor that if he or she fails to make payment and cure the default within 10 days of the date of the notice, or fails to make any future payments as scheduled in the plan, the United States Attorney's office will proceed to execute on the judgment without further notice.

### **3-10.400 Receipt of Payments by United States Attorneys' Office**

All payments made by a debtor in a civil case, including prejudgment settlements, are to be made payable to the United States Department of Justice and deposited through the Direct Deposit (Lockbox) System or the Direct Deposit Program (Debtor Statement Program).

All judgments in payment status, other than bankruptcy cases, see USAM 3-10.420, shall be retained by the United States Attorney's office until fully satisfied. This policy does not affect in any way the return of uncollectible judgments to the agencies for surveillance or the return of marginal cases if payments will never meet the requirements of USAM 3-10.300.

### **3-10.420 Return of Certain Bankruptcy Cases to Agencies for Collection**

A policy different from that set forth above, at USAM 3-10.400, has been established for certain bankruptcy cases under chapters 11, 12 and 13 of title 11, in which there is a confirmed plan which provides for payment to the government. After confirmation of a plan takes place, the case shall be returned to the agency for monitoring and collection.

If special circumstances exist in a particular case which indicate that there is a likelihood of the debtor, or debtor in possession, defaulting on its terms of payment to the government under the plan, or other problems exist relating to timely payment or timely notification of default, the United States Attorney's office may continue to handle the case while monitoring its plan for compliance. At such time as these special circumstances no longer exist, the United States Attorney's office shall return the case to the agency for continued collection.

An exception to the policy of returning cases to the referring agency arises when the United States Attorney's office has reason to believe that there has been fraud or conversion of government property in a bankruptcy case. The case should then be referred to the civil division of the United States Attorney's office for screening, in order to determine whether measures may be taken that would provide for additional civil collections, or if it should be forwarded to the criminal division of the United States Attorney's office for possible prosecution.

The United States Attorney's office and referring agency representatives should coordinate locally to ensure that any bankruptcy case returned to the agency can and will be handled properly. A brief letter must accompany each returned case. This letter shall advise the agency of their responsibility for collection and processing

payments under the debtor's plan, and for returning the case to the United States Attorney's office within 30 days of a default by the debtor on the terms of payment under the plan for purposes of litigation and enforcement. The letter should include the debtor's full name, the agency's file number, the scheduled payment amount pursuant to the confirmed plan, and the scheduled payment date.

The United States Attorney's office must also advise the debtor, debtor in possession, or, where distribution is made by a trustee, advise the trustee as well, in writing that the referring agency will be monitoring the debtor's account, that all future payments should be directly sent to the referring agency, and warn the debtor of the consequences of his or her failure to maintain the payment schedule.

### **3-10.500 Enforced Collections**

When a debtor fails to respond to the postjudgment demand letter or to cure a default on the terms of an established payment plan, immediate steps shall be taken to initiate enforced collection proceedings. The rights and remedies available to the United States, and exemptions available to the debtor, under the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, should be considered in determining the most efficient and effective means to satisfy the judgment.

### **3-10.510 Discovery to Determine Ability to Pay**

Full use shall be made of those discovery methods provided for in the Federal Rules of Civil Procedure whenever financial information is not voluntarily provided by the debtor. If the debtor fails to respond to such discovery requests, those sanctions provided for under the Federal Rules of Civil Procedure shall be pursued promptly and vigorously. All financial information which is obtained through discovery shall be thoroughly reviewed and a determination made on how to proceed to enforce the judgment.

### **3-10.520 Federal Debt Collection Procedures Act Tools**

The Federal Debt Collection Procedures Act provides the exclusive civil procedures the United States must utilize for prejudgment and postjudgment debt recovery. Enforcement of unpaid debts shall be aggressively pursued in accordance with the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308.

### **3-10.530 Offset**

Offset of a debtor's federal tax return, federal salary, or federal administrative benefit should be undertaken whenever permitted by law.

### **3-10.540 Depriving Debtors of Their Residence**

Approval of the United States Attorney should be obtained prior to executing upon a debtor's residence. Normally, execution on a debtor's residence should not be made if the debtor is cooperative and making reasonable efforts to satisfy the judgment. Similarly, execution upon the debtor's personal or real property should not result in the debtor's family becoming a public charge. This policy, however, should not be interpreted as permitting the debtor to live comfortably.

### **3-10.600 Transfers**

Civil postjudgment debts should not be transferred to another district simply because the debtor resides in another district. The nationwide enforcement provision of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3004(b), can be used to enforce collection in another district. A debt should be transferred to another district if it is in the best interests of the United States to do so (e.g., state law preclude the United States from using the Federal Debt Collection Procedures Act enforcement provisions).

### **3-10.620 Assists**

Instances will arise when a Financial Litigation Unit requires the assistance of another United States Attorneys' office to help collect on a judgment. For example, an "assist" might be needed when: (1) a debtor has assets or is employed in another district and the assistance of that district is needed to attach the debtor's assets or garnish the debtor's wages; (2) there are multiple debtors on one debt and they reside in other districts; or (3) to obtain essential information necessary to utilize Federal Debt Collection Procedures Act provisions.

The Financial Litigation Unit requesting an "assist" shall provide the following: (1) specific instructions on the assistance needed; (2) all documents necessary to accomplish the goal of the assist requested; and (3) informing the assisting district when the balance of the debt changes. Primary record keeping and reporting responsibility will remain with the office requesting the assist.

### **3-10.700 Terminating Civil Postjudgment Collection Action -- Suspension of Collection Action**

In some instances the prospect of obtaining a substantial sum through enforced collection proceedings will be so poor that continuation of such efforts would be futile. At the same time, however, future prospects for enforcing collection may be such that the judgment cannot be considered permanently uncollectible. With the approval of the Assistant United States Attorney responsible for financial litigation, collection action on such judgments may be suspended.

Updated financial information on suspended civil debts should be obtained and a re-evaluation of the debtor's ability to pay should be made at least once every six months. Judgments should not be retained in a suspense status for more than two years. If a determination is made that a judgment remains uncollectible after making timely, periodic reviews of the debtor's financial situation over a two-year period, the judgment should be returned to the agency for surveillance or closed as uncollectible.

### **3-10.720 Returning Case to Agency for Surveillance**

Many judgments which are deemed presently uncollectible may have future collection potential. For example, the debtor may be young or well educated, or may inherit wealth. When this situation exists, a decision must be made on whether to suspend collection action or to return the judgment to the agency for surveillance. By necessity, this decision must be made on a case-by-case basis, giving due regard to the judgment amount, the posture of the debtor, the likelihood for improvement in the debtor's financial situation over time, and the effectiveness of those judgment enforcement remedies available under the Federal Debt Collection Procedures Act.

When the judgment is presently uncollectible but has future collection potential, and the United States Attorney is not in a better position than the agency to keep the matter under surveillance, the judgment should



be returned to the agency for surveillance. The transmittal letter returning the judgment to the agency for surveillance shall advise the agency that if the debtor's financial situation improves or an enforcement action becomes practical, the agency should re-refer the case to the United States Attorney for legal action. The letter should also inform the agency of the date on which the judgment lien will expire and request that the United States Attorney be notified in writing six months prior to that date if the agency wishes to have the judgment lien renewed.

### **3-10.730 Returning Case to Agency as Uncollectible**

A judgment case should be closed by the United States Attorney's office whenever current financial information reveals that the present and future prospects of collecting a substantial amount are so poor that the reasonable probability is against realizing a net gain over the expenditure of money and resources required to keep the case in an open status. The transmittal letter to the agency closing the case as uncollectible should include the same information as required in USAM 3-10.720. Additionally, the Financial Litigation Unit shall inform the agency that if the agency writes off the debt and a 1099 is issued to the debtor, then the agency must notify the United States Attorney's office to ensure the lien is released.